THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO.3852 OF 2005

DATED: 18.08.2005

Smt Kandula Sesha Ratnam,

W/o late Sri Bapi Raju, aged about

66 years, Occ: House-wife, R/o S.Rayavaram

Village & Mandal, Visakhapatnam

District and another.

...PETITIONERS

Zilla Parishad, Visakhapatnam, reptd. By

Its Chief Executive Officer, Visakhapatnam

District and others.

...RESPONDENTS

ORDER:

This writ petition has been filed by the petitioners who are two in number with a prayer to issue a writ, order or direction more particularly, one in the nature of writ of Mandamus, declaring the action of the respondents in making construction of Shopping Complex on the western side of the properties bearing Nos.5-114.4 and 5.85/2, belonging to them in S.Rayavaram Village and Mandal of Visakhapatnam District, as illegal and arbitrary.

The petitioners 1 and 2 claim that they purchased 72.34 square metres and 77.25 square metres of open sites under registered sale deeds dated 05.06.1972 and 03.05.2001 respectively. It is their further case that they obtained permission from the Gram Panchayat to construct shops in the said sites on 03.06.2004. The grievance of the petitioners is that the second respondent-Gram Panchayat is proceeding with the construction of shopping complex on the rastha which is to the west of their sites and thereby, blocking access from their sites to P.Dharmavaram-Lingaraju Palem R & B Road.

The second respondent filed counter-affidavit. It is stated in the counter-affidavit that to the west of the petitioners' sites there is an open site belonging to the Gram Panchayat and thereafter, a road runs from P.Dharmavaram to Lingaraju Palem R & B and therefore, the petitioners cannot have any claim over the Gram Panchayat site, which is adjacent to their sites on the western side. I deem it appropriate to refer para No.3 of the counter-affidavit, which reads thus: -

> The allegation that on the western side of the petitioners' plots there is road known as P.Dharmavaram to Lingaraju Palem R & B Road is not true and correct. In fact between the said road and the petitioners' plots a site belonging to Gram Panchayat is situated. With a view to augment the resources of Gram Panchayat, the Gram Panchayat has decided to construct shops in the said site. The Gram Panchayat is only constructing shops by leaving 5 feet space between the petitioners' plots and the Gram Panchayat site. The allegation that road leading from P.Dharmavaram to Lingaraju Palem R & B Road is proposed to be widened is not true and correct. The said road leads to Lingarajupalem and two other small villages and the vehicular traffic also is too less, as such there is no need to widen the said road. The width of the existing road is 35 feet road which is sufficient to cater the needs of the public.

Heard the learned counsel for the petitioners and the learned standing counsel appearing for the second respondent-Gram Panchayat.

Learned counsel for the petitioners submits that the road which runs

from P.Dharmavaram to Lingaraju Palem R & B is on the western side of the petitioners' sites and therefore, the second respondent-Gram Panchayat cannot be permitted to construct shopping complex on the public road, causing much inconvenience to the petitioners in enjoying their sites. He further submits that the sanction proceedings issued by the Chief Executive Officer, Zilla Parishad Office –first respondent is not specific as to in which site the shopping complex at S.Rayavaram Village is to be constructed and therefore, the proposed construction of shopping complex by the second respondent-Gram Panchayat is arbitrary and illegal.

Learned standing counsel appearing for the second respondent-Gram Panchayat submits that title documents of the petitioners speak of the open site ('*santha bayalu*') to the west of their sites and therefore, the petitioners cannot be permitted to contend that the road leading from P.Dharmavaram to Lingaraju Palem R & B runs to the west of their sites. Learned counsel refers the document dated 05.06.1972 under which the first petitioner purchased an open site of 72.34 square metres.

As per the boundaries mentioned in the document, dated 05.06.1972, under which the first petitioner purchased an open site of 72.34 square metres, the western boundary is 'santha bayalu' (open site). Therefore, the contention of the petitioners that the road from P.Dharmavaram to Lingaraju Palem R & B runs to the west of the sites purchased by them has no substance. If the proposed constructions of the Gram Panchayat on the open site belonging to it cause infringement of the petitioners' easementary rights, the remedy is elsewhere and it is not for this Court to examine whether the proposed constructions are infringing the easementary rights of the petitioners. Therefore, I find that the writ petition is devoid of merits and accordingly, the same is dismissed. No order as to costs.

18.08.2005

dr